

any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(d) *Investigation.* (1) TVA will make a prompt investigation whenever a complaint is unresolved within 60 days after it is filed with TVA or is reopened because of a violation of the mediation agreement. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with the Act and this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with the Act and this part.

(2) As part of the initial investigation, TVA shall use informal fact finding methods including joint or individual discussions with the complainant and recipient to establish the facts, and, if possible, to resolve the complaint to the mutual satisfaction of the parties. TVA may seek the assistance of any involved State agency.

(3) If TVA cannot resolve the matter within 10 calendar days after the mediator returns the complaint, it shall complete the investigation, attempt to achieve voluntary compliance satisfactory to TVA, if the investigation indicates a violation, and arrange for enforcement as described in § 1309.15, if necessary.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

§ 1309.15 How will TVA enforce compliance with the Act and this part?

(a) If a compliance report, self-evaluation, or preaward review indicates a violation or threatened violation of the Act or this part, TVA shall attempt to secure the recipient's voluntary compliance with the Act and this part. If the violation or threatened violation cannot be corrected by informal means, compliance with the Act and this part may be effected by the following means:

(1) Termination of a recipient's financial assistance under the program or activity involved where the recipient has violated the Act or this part. The determination of the recipient's violation may be made only after a re-

cipient has had an opportunity for a hearing on the record before an appropriate hearing officer.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this part.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency which will have the effect of correcting a violation of the Act or this part.

(iii) Commencement by TVA of proceedings to enforce any rights of TVA or obligations of the recipient created by the contract, the Act, or this part.

(b) Any termination under paragraph (a)(1) of this section shall be limited to the particular recipient and the particular program or activity (or portion thereof) receiving financial assistance from TVA which is found to be in violation of the Act or this part. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive financial assistance from TVA.

(c) No assistance will be terminated under paragraph (a)(1) of this section until:

(1) TVA has advised the recipient of its failure to comply with the Act or this part and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after TVA has sent a written report of the circumstances and grounds of the termination of assistance to the committees of the Congress having legislative jurisdiction over the program or activity involved. A report shall be filed in each case in which TVA has determined that assistance will be terminated under paragraph (a)(1) of this section.

(d) TVA may defer granting new financial assistance to a recipient when termination proceedings under paragraph (a)(1) of this section are initiated.

(1) New financial assistance includes all assistance administered by or through TVA for which an application

or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New financial assistance does not include assistance approved prior to the beginning of termination proceedings.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under paragraph (a)(1) of this section. A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and TVA. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

§ 1309.16 What is the alternate funds disbursal procedure?

When TVA withholds funds from a recipient under this part, TVA may contract to disburse the withheld funds directly to any public or nonprofit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with this part and to achieve the goals of the Federal financial assistance involved.

[46 FR 30811, June 11, 1981, as amended at 68 FR 51357, Aug. 26, 2003]

§ 1309.17 What is the procedure for hearings and issuance of TVA decisions required by this part?

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1309.15(a)(1), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question

has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under the Act and § 1309.15(a)(1) and a consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before a hearing officer who shall be designated by TVA's General Manager, and who shall not be a TVA employee.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof by TVA's Board of Directors shall be conducted in conformity with this part and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters, as prescribed by the hearing officer. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to